IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8652 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARUNABEN HIMATBHAI ADODIYA

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

Mr.Uday Bhatt, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 23/11/2000

ORAL JUDGEMENT

#. By this petition under Article 226 of the Constitution of India the petitioner has challenged the detention order passed against him under the Gujarat Prevention of Anti Social Activities Act 1985 (PASA Act for short) on 12.7.2000 by the District Magistrate,

Bhavnagar in exercise of the powers conferred upon him by section 3(1) of the PASA Act. The detenu came to be detained on 15.7.2000 in pursuance of the above said order.

#. The facts reveals that the petitioner was labelled as bootlegger within the meaning of section 2(b) of the said Act and was considered as obstruction to public health and public order. In all, under the Prohibition Act, right from 1998 to 16.6.2000 11 crimes were registered against the petitioner. Taking into consideration the statements of 4 witnesses who on assurance of anonymity stated before the police that the petitioner was a head strong person and dealing in illegal liquor and indulging in anti social activities and the investigtion of the abovesaid crime, the detainng authority reched to subjective satisfaction.

#. Learned advocate Ms. D.R. Kachhavah on behalf of the petitioner and learned AGP Mr. Uday Bhatt for the respondents were heard.

#. The order of detention came to be challenged on various grounds. On scrutiny of the record and considering the rival contentions, it appears that the petition can be disposed of on one ground alone. The detaining authority in the grounds for detention has mentioned that all the 4 witnesses whose identity is kept secret in exercise of the power conferred upon him under section 9(2) of the PASA Act were called before the detaining authority and the facts of the statements were verified personally by the detaining authority. While perusing such statements produced on record, we found that in fact the verification of the statement has been done by the Superintendent of Prohibition Squad and this verification has merely been signed by the detaining authority putting his seal on it.

#. In such circumstances, this court in the matter of Jakirbhai Rahimbhai Nagori vs. District Magistrate, Mehsana & ors. as reported in 1996(1) GLH 300 ruled that claim of privilege by the detaining authority under section 9(2) of the PASA Act on the basis of such endorsement i.e. by merely putting signature and seal in this case, was not genuine one. This court in Jakirbhai Rahimbhai Nagori's case (Supra) referred the case of Koli Ashwin vs. State of Gujarat wherein Special Civil Application No.1812 of 1993 the Division Bench of this Court has observed as under:

" However, as is well established, for exercising

> the power under Section 9(2) what is required for a detaining authority is that he must come to a subjective satisfaction himself and for that purpose, he must be able to point out either in the grounds or in the contemporaneous record that he had sufficient material before him to come to that subjective satisfaction. In the instant case, in the aforesaid background of the statement of each of the witnesses, when we turn to the statements for further material, which the detaining authority can make use of for arriving at a subjective satisfaction except for one word "verified" used by the Dy.S.P who apparently has put it pursuant to an instruction received from the detaining authority for verifying the statement, there is no other material"

#. In this case also it appears that the detaining authority has put his signature below verification of the statement but there is no other contemporaneous material to denote that in fact the detention authority called the witnesses and verified the facts of the statements to reach to a subjective satisfaction and to claim privilege under section 9(2) of the PASA Act to keep the identity of such witnesses secret. The detention order therefore, is vitiated by non application of mind by the detaining authority on this ground alone. Therefore, the detention order dated 12.7.2000 passed by the District Magistrate, Bhavnagar is not sustainable and the same is required to be set aside on this ground alone.

#. In this view of the matter the detention order dated 12.7.200 passed by the detaining authority i.e. District Magistrate, Bhavnagar is set aside. The petitioner-Arunaben Himatbhai Adodiya is ordered to be set at liberty forthwith if she is not required to be detained in custody for any other purposes. Rule is made absolute.

(J.R.Vora.J)

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